



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Court Decisions Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On March 30, 2016, the United States Court of International Trade (“the Court”) issued final judgments in Catfish Farmers of America et al. v. United States, Consol. Court No. 12-00087, sustaining the Department of Commerce’s (“the Department”) AR7 Remand final results.¹ In the AR7 Remand, the Department recalculated the weighted-average dumping margin for QVD Food Co. Ltd. (“QVD”) and Vinh Hoan Corporation (“Vinh Hoan”) using revised surrogate values for by-products (fish waste, fresh broken meat, and frozen broken fillets by-products, and capping the fish oil by-product surrogate value).² Because QVD’s margin changed, it also becomes the margin for those companies not individually examined but receiving a separate rate.³

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir.

¹ See Final Results Of Redetermination Pursuant To Court Remand, Consol. Court No. 12-00087, Slip Op. 14-146 (CIT December 18, 2014), dated June 26, 2015, (“AR7 Remand”) available at <http://enforcement.trade.gov/remands/14-146.pdf>.

² See AR7 Remand at 25-29. The weighted-average margin for Vinh Hoan remains de minimis. However, as explained in the “Background” section, the Department’s recalculation of these surrogate values now yields a different weighted-average dumping margin for QVD. Thus, consistent with our practice, the Department has amended the final results with respect to QVD.

³ These companies include: (1) Anvifish Joint Stock Company; (2) Asia Commerce Fisheries Joint Stock Company; (3) Bien Dong Seafood; (4) Binh An Seafood Joint Stock Company; (5) CASEAMEX; (6) East Sea Seafoods Limited Liability Company; (7) Hiep Thanh Seafood Joint Stock Company; (8) Southern Fisheries Industries Company Ltd.; and (9) Vinh Quang Fisheries Joint-Stock Company (collectively, “Separate-Rate Applicants”).

2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in these cases is not in harmony with the Department’s final results of the antidumping duty administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”) covering the period of review (“POR”) August 1, 2009, through July 31, 2010. Thus, the Department is amending the final results with respect to the weighted-average dumping margins for QVD and the Separate-Rate Applicants.⁴

DATES: Effective April 11, 2016.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2012, the Department issued AR7 Final Results.⁵ Vinh Hoan and Petitioners⁶ timely filed complaints with the Court and challenged certain aspects of the AR7 Final Results. On December 18, 2014, the Court remanded the Department’s AR7 Final Results and instructed the Department to reconsider each of the following issues: 1) the significance of presumed qualifiable differences between farm-gate and wholesale prices with respect to whole live fish; 2) the reliability of the Bangladeshi Department of Agricultural Marketing (“DAM”) data with respect to whole live fish; 3) the fact that there are no quantities associated with the

⁴ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) (“AR7 Final Results”) and accompanying Issues and Decision Memorandum.

⁵ Id.

⁶ Catfish Farmers of America and the following individual U.S. catfish processors: America’s Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, “Petitioners”).

DAM data; 4) surrogate country selection in light of the totality of the available data, i.e., including the non-fish factors of production (“FOPs”) surrogate values (“SVs”) following reconsideration of the whole live fish issues; and 5) the selection of the SVs for fish waste, fish oil, fresh broken meat and frozen broken fillets.⁷

On June 26, 2015, the Department filed the AR7 Remand with the Court.⁸ The Department maintained the selection of Bangladesh as the primary country. In addition, the Department selected different surrogate values for fish waste, fresh broken meat, and frozen broken fillets by-products, and capped the fish oil by-product surrogate value. In addition, we accounted for all calculation changes as a result of the original ministerial error allegations.

As a result, there are calculation changes due to selecting different by-product surrogate values. After accounting for all such changes and issues, the resulting antidumping margin for the only mandatory respondent, QVD, is \$0.19 per kilogram. Because QVD’s margin changed, it would also become the margin for those companies not individually examined, but receiving a separate rate. On March 30, 2016, the Court entered judgments sustaining the AR7 Remand.⁹

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s March 30, 2016, judgment sustaining the AR7 Remand constitutes a final

⁷ See Catfish Farmers of America et al. v. United States, Court No. 12-00087, Slip Op. 14-146 (CIT December 18, 2014).

⁸ See AR7 Remand.

⁹ See Catfish Farmers of America et al. v. United States, Court No. 11-00087, Slip. Op. 16-29 (CIT March 30, 2016).

decision of the Court that is not in harmony with the Department's AR7 Final Results. This notice is published in fulfillment of the publication requirement of Timken.

Amended Final Results

Because there is now a final court decision, the Department is amending the AR7 Final Results with respect to QVD and the Separate-Rate Applicants. The revised weighted-average dumping margins for these exporters during the period April 1, 2009, through March 31, 2010, as follows:

Exporter Name	Weighted Average Dumping Margin (Dollars Per Kilogram)
QVD Food Company Ltd. ¹⁰	0.19
Anvifish Joint Stock Company	0.19
Asia Commerce Fisheries Joint Stock Company	0.19
Bien Dong Seafood	0.19
Binh An Seafood Joint Stock Company	0.19
CASEAMEX	0.19
East Sea Seafoods Limited Liability Company	0.19
Hiep Thanh Seafood Joint Stock Company	0.19
Southern Fisheries Industries Company Ltd.	0.19
Vinh Quang Fisheries Joint-Stock Company	0.19

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by QVD and the

¹⁰ This rate is also applicable to QVD Dong Thap Food Co., Ltd. ("Dong Thap") and Thuan Hung Co., Ltd. ("THUFICO"). In the second review of this order, the Department found QVD, Dong Thap and THUFICO to be a single entity, and because there has been no evidence submitted on the record of this review that calls this determination into question, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53387 (September 11, 2006).

Separate-Rate Applicants using the assessment rate calculated by the Department in the Remand and listed above.

Cash Deposit Requirements

Unless the applicable cash deposit rates have been superseded by cash deposit rates calculated in an intervening administrative review of the AD order on frozen fish fillets from Vietnam, the Department will instruct U. S. Customs and Border Protection to require a cash deposit for estimated AD duties at the rate noted above for each specified exporter and producer combination, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after April 11, 2016. For Bien Dong, these amended final results will result in a change in its cash deposit rate, from \$0.03/kg, as established in the AR7 Final Results, to \$0.19/kg.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 13, 2016.

Paul Piquado,

Assistant Secretary

for Enforcement and Compliance.

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